

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 6, 2004 Session

JOHN RALPH WOOD v. JUDITH A. (GRANDE) WOOD

Appeal from the Circuit Court for Smith County
No. 4996 Clara W. Byrd, Judge

No. M2003-00193-COA-R3-CV - Filed December 28, 2004

After a marriage of over twenty-six years, the parties were divorced. The trial court granted the divorce to both parties pursuant to Tenn. Code Ann. § 36-4-129, incorporated their property division agreement into the final decree, and declared that the husband would not be required to pay any alimony. The wife contends on appeal that the trial court should have awarded her alimony *in futuro* and attorney fees. In light of the duration of the marriage and the relative economic circumstances of the parties after divorce, we believe the wife is entitled to alimony. We accordingly modify the divorce decree and order the husband to pay the wife alimony of \$1,200 per month. We also order him to pay one-half of the wife's attorney fees at trial and on appeal.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed as Modified**

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM B. CAIN and FRANK G. CLEMENT, JR., J.J., joined.

Mary Frances Lyle; David Lyle, Nashville, Tennessee, for the appellant, Judith A. (Grande) Wood.

Christi L. Dalton, Hartsville, Tennessee, for the appellee, John Ralph Wood.

OPINION

I. A Marriage of Long Duration

John Ralph Wood and Judith Grande Wood married in 1976. Both parties had been married previously. The wife had two children from her first marriage, whom the husband adopted. The parties lived in South Florida at the time of their marriage, but moved to Tennessee shortly thereafter. In 1980, they bought a 106 acre farm in Smith County. The wife had realized almost \$93,000 by selling a piece of Florida property which she had owned before the marriage. That money went into the farm purchase, as well as into the construction of a marital home on the property.

The husband was a licensed pharmacist, and his professional efforts were the primary source of the family's income. The wife, who had a high school education and one-half year of college, did not perform paid work outside the home during the marriage. She took care of the house and the farm and raised the children. She also provided substantial unpaid assistance for the husband's entrepreneurial ventures.

When the parties first moved to Tennessee, the husband took a job at an established pharmacy. In 1980, he opened a pharmacy of his own in Carthage. The wife worked there as an unpaid clerk and pharmacy technician. In 1981, the husband opened a second pharmacy in Gordonsville. The wife became the manager of that store, while the husband managed the Carthage operation. She eventually wound up managing both pharmacies after the husband decided to put all his efforts into a radio station he had bought.

In 1983, the parties purchased a six-unit apartment building in Gordonsville for \$167,500. Four of the units were residential apartments, and two were offices. The wife managed the property, renting out the individual units, cleaning them between rentals, collecting the rent, and doing general maintenance work.

In 1987, the husband decided to purchase a Carthage radio station. The parties paid \$375,000 for the business. They later purchased the real property associated with the studio and with the transmitter and antenna site for an additional \$130,000. The wife took responsibility for payroll and taxes at the station and performed manual labor to maintain the property, including mowing the lawn, painting the exterior of the building, and cleaning the toilets.

Despite their numerous responsibilities, the parties were able to take time out for recreation. They enjoyed eating out at restaurants and did so frequently. They vacationed at a timeshare they owned at Palm Coast Resort in Florida. They traveled to other destinations, like Lake Tahoe, Phoenix, and Palm Springs. Their vacations usually involved playing golf or attending golf tournaments. Both were avid golfers, the husband more so than the wife. The husband's other chief pleasure was announcing the play-by-play action for high school football games on his radio station.

In 1994, the husband underwent a triple heart bypass operation. He was hospitalized for a week, during which the wife stayed by his side, sleeping in a chair in his hospital room almost every night. After the husband came home, his wife nursed him back to health. She tried to protect him from over-exerting himself and packed healthful lunches.

In 1996 and 1997, the parties sold their two pharmacies to the Eckerd drugstore chain. A portion of the proceeds was used to purchase a modular home for the parties' adult son. The home was installed on the family property. The husband took a job at an Eckerd pharmacy, where he worked for the next five years. He then left Eckerd and began working at Rite-Aid, dividing his time between several pharmacies in that chain.

Despite the prodigious efforts the wife made to support the husband's business ventures, he was apparently unhappy with the marriage and with the direction his life had taken. The wife testified that the husband left home after disagreements seven or eight times, sometimes staying away for two or three days. On some of these occasions, she would go to the pharmacy to look for him, and find he had left her the keys to the house with a note declaring that she could have everything and "I'm out of here."

The husband first filed for divorce in 1986 but changed his mind a few days later. He reinstated the divorce complaint in 1987, because of the wife's resistance to his announcement that he intended to buy the radio station. When she told him that she didn't mean to prevent him from going through with the purchase, but that she just wanted him to hire an expert to determine if the price was reasonable, he again decided not to pursue divorce.

In 1999, the husband moved out of the marital residence and filed another divorce complaint. The apparent trigger for this move was the wife's objection to what she believed to be flirtatious behavior between the husband and one of his co-workers. The husband took an apartment in Nashville and lived away from his wife for over a year, but he returned after marriage counseling. The final separation of the parties began in October of 2001, when the husband left the marital home for the last time.

II. Divorce Proceedings

On January 10, 2002, the husband filed the present Complaint for Divorce in the Circuit Court of Smith County. He alleged that the wife was guilty of inappropriate marital conduct or, in the alternative, that there were irreconcilable differences between the parties. The wife filed an Answer and Counter-Complaint for divorce. She denied any misconduct on her part, but admitted to irreconcilable differences.

The wife also claimed that she was not capable of full-time employment because of medical problems and was therefore in need of spousal support. In a later Amended Complaint, she added adultery as a ground for divorce, based on suspicions that the husband was involved in a sexual relationship with a woman he had met at the pharmacy.¹ On March 27, 2002, the trial court entered an agreed pendente lite order, which among other things obligated the husband to pay the wife \$2,250 per month for support, and to continue to pay and maintain the parties' joint health care insurance.

¹The husband admitted that he was involved in such a relationship, and that he had moved into his paramour's apartment. He claimed, however, that he did not begin a sexual relationship with her until after he filed the divorce complaint.

Prior to hearing, the parties reached a Stipulated Property Division Agreement, which divided all the marital assets, including bank accounts, securities, vehicles and household furnishings.² The most valuable assets by far, however, were three pieces of property, which were divided as follows: The parties agreed that the wife would keep the marital home and the farm upon which it is located and the Gordonsville rental property. The husband would keep the radio station. Rather than call experts to testify as to the value of these assets, the parties stipulated to a value of \$200,000 for the marital home and farm, and \$230,000 for the rental property. There was still a debt of \$113,000 on the radio station, and its ownership was subject to the 15.3% interest of silent partners. The parties stipulated to a value of \$249,000 for the husband's equity in the station.³

Since the parties had stipulated to the division of property and the children were no longer minors, the primary issue for resolution at the divorce hearing was whether the wife was entitled to alimony. One of the factors the court is directed to consider in determining alimony is the "provisions made with regard to the marital property," Tenn. Code Ann. § 36-5-101(d)(1)(H). Thus, the income-producing potential of the three prime assets of the marriage was placed at issue.

The hearing was conducted over three days. The only witnesses called to testify, were the parties themselves. Interestingly, husband and wife both faulted each other for the same type of behavior, each claiming that the other was too controlling, and insufficiently appreciative of his or her own efforts.

The wife also complained that the husband had a temper that flared up whenever things did not go as well as he wished and that he tended to take out his frustration on her. He admitted to cursing her, shouting at her, throwing things, and slamming doors so hard that the doorknobs would punch holes in the opposite walls. The wife testified that she went along with everything her husband suggested out of fear of his tantrums and that she did everything she could to make the marriage work.

The husband was asked on cross-examination if he could produce any specific examples of conduct on the wife's part that led him to file for divorce. He said he couldn't think of anything, but insisted that things had just built up over the years. The husband discontinued sexual relations with the wife in 1992, and she could not induce him to begin again.

During the December 9 hearing, the court ordered the attorneys to discontinue questioning relating to fault because "I have all the evidence I need," and to focus on income and expenses. The

²The total value of all the marital property aside from the furniture in the marital home and the three prime marital assets amounted to \$52,414. About half of that was material goods, such as the husband's 1997 Cadillac and the wife's 1997 Acura, a four wheeler, a 1966 Airstream Camper, and thirteen head of cattle. The division of the financial assets was roughly equal. The wife was awarded \$12,969 in such assets, and the husband \$14,158. Both parties were assigned debts that reduced their shares by approximately half.

³Interestingly, the proof includes a sworn financial statement, in which the parties had placed a value of \$547,000 on the radio station.

parties presented detailed testimony and documentation as to their present economic circumstances and their future prospects. The evidence showed that the parties had not saved a substantial amount of money during the marriage and that, aside from the tangible assets they had acquired, their main resources were their respective jobs.

The husband testified that he was earning \$42 an hour at Rite-Aid and was guaranteed a minimum of 77 hours every two weeks. The job included paid vacations, holidays, sick leave, and a 401(k) match. He also testified that the revenue generated by the radio station was sufficient to pay its expenses and its debt, but did not generate much of a profit. The wife was earning \$6 an hour, working part-time at a snack bar at the Hermitage Golf Club, with no benefits other than the opportunity to play golf without paying greens fees. She was also continuing to manage the Gordonsville rental property and to earn a slight profit from that operation.

At the conclusion of the parties' testimony, the husband's attorney argued that the wife did not have any need for alimony. She noted that the wife got the larger share by valuation of the marital property -- 61%, versus 39% for the husband, and that if the wife needed any additional money, there was no medical reason that she could not work full-time.

The wife's attorney pointed to the wife's contributions to the marriage, its duration, the husband's unilateral decision to end the marriage, and his overwhelming advantage in income-earning ability. She asked the court to award her client alimony *in futuro* of \$3,500 per month, order that the husband take out a life insurance policy of \$300,000 to secure the alimony, and for the husband to pay the wife's attorney fees.

After final arguments, the trial court announced its decision from the bench. The court found that both parties were responsible for the dissolution of the marriage and that both were therefore entitled to divorce. The court noted that the wife received the larger share of the marital property in the stipulated property division agreement and stated that the income-producing potential of that property precluded any need for alimony.

The court's ruling was memorialized in the Final Decree of Divorce, entered on December 20, 2002. The decree stated that both parties had grounds for divorce, and declared them divorced pursuant to Tenn. Code Ann. § 36-4-129. The decree also incorporated the parties' property division agreement, declared that the husband would have no further alimony obligation, and required each party to pay for that party's own attorney fees. The wife appeals the court's decision as to alimony and attorney fees.

III. Alimony *in Futuro*

We must acknowledge at the outset that numerous opinions have declared that the trial court has broad discretion in determining the type, amount, and duration of alimony to award, based upon the particular facts of each case. *Burlew v. Burlew*, 40 S.W.3d 465, 470 (Tenn. 2001); *Crabtree v. Crabtree*, 16 S.W.3d 356, 360 (Tenn. 2000); *Sullivan v. Sullivan*, 107 S.W.3d 507, 511 (Tenn. Ct.

App. 2002); *Kinard v. Kinard*, 986 S.W.2d 220 (Tenn. Ct. App.1998). Since alimony is largely a matter in the discretion of the trial court, appellate courts are not inclined to alter a trial court's award of alimony, unless the trial court applied an incorrect legal standard or reached a decision not supported by the facts that causes an injustice to the party complaining. *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001). Findings of fact by the trial court are presumed to be correct unless the evidence preponderates otherwise. Tenn. R. Civ. P. 13(d).

With these principles in mind, we must review the criteria the trial court is required to consider when making an alimony determination. Tenn. Code Ann. § 36-5-101(a)(1) gives the courts discretion to order “suitable support and maintenance of either spouse by the other spouse . . . according to the nature of the case and the circumstances of the parties.” Another section of the same statute, Tenn. Code Ann. § 36-5-101(d)(1)(C), declares the general assembly’s preference for temporary rehabilitative alimony, whenever possible,⁴ but goes on to say,

Where there is relative economic disadvantage and rehabilitation is not feasible in consideration of all relevant factors, including those set out in this subsection (d), the court may grant an order for payment of support and maintenance on a long-term basis or until the death or remarriage of the recipient . . .

The long-term support mentioned above is sometimes called periodic support or alimony *in futuro*. The indeterminate nature of its duration and total outlay sets it apart from other forms of alimony such as rehabilitative alimony, alimony *in solido*, and transitional alimony, which are usually payable over a pre-determined number of months or years or are for a set amount.

The factors in subsection (d), mentioned above, which the court is directed to consider in determining whether to award support, and the nature, amount and duration of such support, are as follows:

(I) The relative earning capacity, obligations, needs, and financial resources of each party including income from pension, profit sharing or retirement plans and all other sources;

(ii) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party's earning capacity to a reasonable level;

(iii) The duration of the marriage;

(iv) The age and mental condition of each party;

⁴In the present case, neither party has suggested that Ms. Wood would be a suitable candidate for rehabilitative alimony. In light of her age (57 at the time of trial), her lack of formal education, and medical problems which include hypothyroidism, carpal tunnel syndrome, arthritic knees, chronic back pain, hammer toe, bunions, and high blood pressure, it is highly unlikely that she would be able to significantly increase her earning potential through the application of temporary support to some sort of vocational training program.

- (v) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;
- (vi) The extent to which it would be undesirable for a party to seek employment outside the home because such party will be custodian of a minor child of the marriage;
- (vii) The separate assets of each party, both real and personal, tangible and intangible;
- (viii) The provisions made with regard to the marital property as defined in § 36-4-121;
- (ix) The standard of living of the parties established during the marriage;
- (x) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;
- (xi) The relative fault of the parties in cases where the court, in its discretion, deems it appropriate to do so; and
- (xii) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

As can be readily seen, many if not most of the enumerated factors are directly related to the economic needs of the parties and their ability to meet those needs with the economic resources and earning potential available to them after divorce. Our courts have acknowledged this connection many times by stating that the most important factors to consider when deciding upon alimony are the need of the disadvantaged spouse, and the ability of the other spouse to provide support. *Robinson v. Robinson*, 76 S.W.3d 337, 338 (Tenn. 2002); *Bogan v. Bogan*, 60 S.W.3d 721, 730 (Tenn. 2001); *Aaron v. Aaron*, 909 S.W.2d 408, 410 (Tenn. 1995); *Anderton v. Anderton*, 988 S.W.2d 675, 682-83 (Tenn. Ct. App. 1998); *Cranford v. Cranford*, 772 S.W.2d 48, 50 (Tenn. Ct. App. 1989).

In this case, the trial judge applied the criterion of need and found that because of the agreement the parties reached with regard to the marital property, Ms. Wood had no need for alimony. It appears to us that the evidence preponderates against the trial court's findings. Even though the wife got the larger share of the property, we believe that she still needs spousal support.

A. The Wife's Need

After the parties separated, the wife applied for work at several pharmacies, doctor's offices, and business offices. None of them offered her a job. At age 57 and without a well-documented work history she encountered difficulties trying to re-enter the workplace. In August of 2002, the wife was finally hired to work at the Hermitage Golf Course's snack bar. She cooks hot dogs and hamburgers, scrubs the grill, wipes tables, washes dishes, and vacuums. She works 26 hours a week, and is paid \$6.00 per hour. After taxes, she takes home \$582 per month

The wife also works a minimum of 15 hours a week on the rental property that she received as part of the property division. Gordonsville is apparently not a “hot” market for rentals; the wife testified that during the time she managed the building, the offices sometimes remained vacant for years at a time and the apartments were frequently vacant for several months between tenants.

The record shows that between November 1, 2001, and October 31, 2002, the property generated \$26,065 in rental income. Expenses were \$23,639, resulting in a very modest profit. The expenses included a monthly mortgage payment of \$1,327. The mortgage was scheduled to be paid off within ten months of trial,⁵ thereby resulting in an increase in profits.

The trial court took note of the amount of labor the building required for a relatively modest return and the \$230,000 stipulated value of the property, and questioned whether there might be a more productive use of the asset.

“If you sold the building for \$230,000, you could invest the income at 5 percent – if you just put it in a little savings account – and draw \$11,500 a year. If you went to a more aggressive investment, you’re talking \$23,000 a year at 10 percent. I just don’t see why you hold onto it if it’s going to cost you money and time and pain and Motrin.”

The husband suggests another source of potential income for the wife. When the parties purchased a modular home for their son and placed it on their farm, the son allegedly promised to pay them \$400 or \$500 per month rent. He never paid, and neither party insisted on payment. The husband now asserts that the wife should either compel her son to pay or should evict him and rent the home to somebody else. The wife testified, however, that she was not inclined to start charging her son rent, and that at this stage of her life, having a close family member living on the same piece of remote rural property remains a source of personal security that can not be duplicated by renting to a stranger.

If we add the wife’s current income from her job (\$582 per month net) to the estimated maximum return from the rental property after expenses and after the mortgage is paid off (\$1,500) and impute to her \$500 per month income from the rental of the modular home, we would come up with a monthly income of \$2,582. If we replace the building rental income with the monthly return from \$230,000 invested at 5% (\$958), we come up with \$2,040. The rental income amounts do not include a deduction for taxes.

⁵The proof shows that the rental amount for the four apartments was \$450 per month each, and that the two offices rented for an average of \$500 per month each. The maximum rental revenue at these rates would be \$2,800 per month, or \$33,600 per year. After the mortgage was paid off, the owner would still be responsible for taxes, insurance, maintenance and repairs. Thus, even with 100% occupancy, the profit that could be generated from the property would be limited. Ms. Wood testified that the building and its utilities need extensive repairs, in part because of damage caused by tenants.

We also question whether it would be equitable to require her to ask her son to start paying rent after years during which the husband acquiesced to non-payment, or in the alternative to evict him. Deducting \$500 of imputed rent from the estimated income reduces her income to \$1,500-\$2,000 per month.

These figures are less than the lowest estimate of monthly expenses the wife submitted to the court.⁶ While it might not be impossible for the wife to meet her monthly expenses without alimony, it is clear that she would have little margin for error. Additionally, she would not be able to save anything for retirement or to guard against an inability to work.

B. The Husband's Means

The husband did not deny that he had the means to pay alimony, but argued that since the wife could meet her needs through the marital property she was awarded, his means were not relevant. We do not agree. We note that our Supreme Court has recently stated that the trial court must consider all the relevant factors in Tenn. Code Ann. § 36-5-101(d)(1) to determine the nature and extent of support. *Robertson v. Robertson*, 76 S.W.3d 337, 340 (Tenn. 2002). One of those factors is the standard of living of the parties established during the marriage.

It is not always possible for both parties, post-divorce, to maintain the same standard of living they enjoyed during the marriage. 76 S.W.3d at 340. But in marriages of long duration, to which each party made a significant contribution, it is inequitable to compel one party to revert to a marginal standard of living, while the other party enjoys a far more luxurious standard, comparable to the one the parties became accustomed to during the marriage. *See Aaron v. Aaron*, 909 S.W.2d 408, 411 (Tenn. 1995)(stating that “alimony should be awarded in such a way that the spouses approach equity”).

In comparison to the wife, the husband has the benefit of a comfortable financial cushion. He is licensed as a pharmacist in both Tennessee and Kentucky, and is paid \$42 an hour for working at Rite-Aid. He is guaranteed a minimum of 77 hours every two weeks, and can work additional hours if he wishes. We calculate that if he works the guaranteed minimum hours and takes all the paid vacations, holidays, and sick leave he is entitled to, he will earn \$84,064 annually, or \$7,005 per month before taxes and deductions. The proof shows that he always works at least the minimum, and sometimes puts in additional hours or works on holidays, and that his monthly income has at

⁶The wife submitted three different statements of Income and Expenses in the course of this litigation, containing widely differing estimates of her monthly expenses. The first statement calculated those expenses at \$2,804 per month, the second at \$3,562 per month, and the third at \$5,459 per month. The wife's attorney stated at oral argument that her reasonable expenses amounted to \$4,200.

times exceeded \$10,000. Two sworn financial statements produced by the husband indicate that his monthly income typically exceeds his expenses by over \$2,000.⁷

Rite-Aid also offers its employees a 401(k) retirement plan, with an employer match for the first 3%. The husband puts 10% of his income into the plan, an amount which is not included in the net income reported on his income and expense statements. The husband was sixty years old at the time of trial, and since he has been gainfully and lucratively employed for most of his life, he will soon be entitled to collect a social security check. In comparison, the wife's decades of unpaid employment will not result in a retirement check for her.

The husband testified that the radio station only earns a few hundred dollars a month in profit. The \$190,000 per year the station grosses enables him to pay its expenses, including the monthly installments of \$3,034 on the debt he incurred to buy the station. The note will be paid off in four years, after which the radio station should generate a profit of over \$3,000 per month for the benefit of the husband.

The proof showed that the husband had been living with his girlfriend in a rented apartment, with the two of them equally splitting the rent of \$400 per month and the utilities. He testified on December 10 that they have since moved to a rented house in Somerset, Kentucky. They frequently go out to restaurants and have taken a number of golf vacations. In short, unlike his former wife, he is maintaining a life style similar to the one they enjoyed during the marriage.

C. Other Relevant Factors

Several other factors listed in 36-5-101(d)(1) support an award of alimony *in futuro* in this case, and we will discuss them briefly:

(1) The duration of the marriage: our courts have frequently found it appropriate to make an award of alimony *in futuro* when marriages of long duration are dissolved by divorce, especially in cases where the obligee (typically the wife) has surrendered her own opportunities for professional or vocational advancement for the benefit of the husband's career. *Young v. Young*, 971 S.W.2d 386, 391-392 (Tenn. Ct. App. 1997); *Long v. Long*, 968 S.W.2d 292, 295 (Tenn. Ct. App. 1997); *Ford v. Ford*, 952 S.W.2d 824, 826-827 (Tenn. Ct. App. 1996). In this case, the wife chose to support her husband's professional efforts instead of seeking an independent career for herself.

(2) The physical condition of each party: this factor relates closely to questions of need and ability to pay. In this case, the proof showed that the husband had undergone a triple heart bypass, while the wife suffers from numerous chronic conditions. Both parties may thus in future experience increased need for medical care or decreased ability to earn income. However, the work the wife

⁷ The first statement excludes the pendente lite support the husband was paying, and shows a monthly surplus of \$2,851. The second shows a surplus of \$925 without alimony, but it includes in the expense column \$542 in business expenses for Wood Broadcasting, and \$530 for "miscellaneous."

performs is more physically demanding, and thus she may be at greater risk than the husband of losing her income-earning ability.

(3) The standard of living the parties established during their marriage: as we stated above, in marriages of long duration, to which each party made a significant contribution, it is inequitable for one party to have to endure a greatly reduced standard of living, while the other party is allowed to continue to enjoy a standard comparable to the one he or she is accustomed to.

(4) The contributions each party made to the marriage: the wife not only made a significant contribution as a homemaker and parent (which the general assembly declared in Tenn. Code Ann. § 36-5-101(d)(1)(b) to be of equal dignity and importance to economic contributions to the marriage), she also made an enormous economic contribution by working for and managing the various businesses the husband began. At times, her labor kept businesses afloat after the husband lost interest in them. Additionally, the money she realized from the sale of her Florida property went directly into the acquisition of the marital home.

(5) The relative fault of the parties: the trial court did not find either party to be more at fault than the other for the failure of the marriage. We note, however, that the husband could not testify as to any specific misconduct on the part of the wife.

In light of the relevant factors enumerated in 36-5-101(d)(1), as well as the wife's obvious need for additional income and the husband's demonstrated ability to furnish that income, we believe the trial court's decision not to award her alimony was against logic and reasoning, and that it constituted an injustice against the wife. We therefore modify the court's order to include alimony *in futuro* of \$1,200 per month.

We also believe it would be equitable for the husband to guarantee continued support of the wife by maintaining an appropriate amount of life insurance. The husband testified that he already had \$85,000 of term life insurance through his job (the equivalent of one year's salary), and could purchase additional units of insurance through payroll deduction. Considering the annual amount of alimony due, we believe that \$85,000 in life insurance is sufficient. Consequently, the husband shall be required to maintain at least \$85,000 of life insurance naming the wife, Judith A. Wood, as beneficiary.

IV. Attorney Fees

An award of attorney fees in divorce cases is considered to be a form of alimony or spousal support, and is usually characterized as alimony *in solido*. *Yount v. Yount*, 91 S.W.3d 777, 783 (Tenn. Ct. App.2002); *Miller v. Miller*, 81 S.W.3d 771, 775 (Tenn. Ct. App.2001); *Wilder v. Wilder*, 66 S.W.3d 892, 894 (Tenn. Ct. App.2001). As with other forms of spousal support, the need of the spouse requesting the award of attorney's fees is the single most important factor to consider, and the obligor spouse's ability to pay is also an important consideration. *Miller*, 81 S.W.3d at 775;

Hazard v. Hazard, 833 S.W.2d 911, 917 (Tenn. Ct. App. 1991). *Cranford v. Cranford*, 772 S.W.2d 48, 50 (Tenn. Ct. App. 1989).

An award of attorney's fees as additional alimony may be appropriate where the divorce does not provide the obligee spouse with a source of funds, such as from property division, with which to pay his or her attorney's fees. *Yount*, 91 S.W.3d at 783. In the present case, the wife did receive substantial assets in the property division, and could at least in theory sell some of those assets for that purpose. However, a party should not be required to liquidate assets that will be needed as a source of income in the future to defray legal expenses. *Batson v. Batson*, 769 S.W.2d 849, 862 (Tenn. Ct. App. 1988); *Harwell v. Harwell*, 612 S.W.2d 182, 185 (Tenn. Ct. App. 1980).

We note that the marital property in this case did not include much in the way of liquid assets. Neither party received a sufficient amount of such assets to pay the attorney fees they incurred. The wife testified that she had to borrow \$6,000 from her sister in order to pay a portion of those fees. The husband may find he has to pay his attorney in installments. One difference between the respective situations of the parties is that the husband has access to a substantial and reliable source of income to pay his attorney. The wife does not, and would have to deplete her income-producing assets in order to make payment. We therefore believe it most equitable to order the husband to pay one-half of the attorney fees the wife incurred at trial and in prosecuting this appeal.

V.

The decree of the trial court is modified as to alimony. The husband is ordered to pay the wife \$1,200 per month as alimony *in futuro*, with the obligation to apply to the date of the final decree. The husband may pay the accumulated amount due in monthly installments of \$600 per month to be added to his monthly alimony payment. The husband is also ordered to acquire and maintain \$85,000 in life insurance for the benefit of the wife and to pay one-half of the attorney fees she incurred at trial and in prosecuting this appeal. We remand this case to the Circuit Court of Smith County for any further proceedings that may be necessary. Tax the costs on appeal to the appellee, John Ralph Wood.

PATRICIA J. COTTRELL, JUDGE